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IN THE
Supreme Court of the United States

OCTOBER TERM, 1984

LABORERS' INTERNATIONAL UNION OF
NORTH AMERICA, AFL-CIO,

Petitioner,

VS.

PASQUALE PETRAMALE,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

BRIEF OF THE RESPONDENT IN OPPOSITION

BURTON H. HALL
HALL & SLOAN
401 Broadway
New York, New York 10013
(212) 431-9114

Attorney for Respondent

13/28

COUNTER-STATEMENT OF QUESTIONS PRESENTED

1. Where an international union has knowingly, in full awareness of its unlawfulness, ratified and directed the imposition of unlawful discipline upon a member by an affiliated local union, may it be held liable therefor to the member?

The court below held that it may.

2. Where a labor union has unlawfully disciplined a member for expression of views, arguments and opinions, may it nevertheless escape liability therefor on the ground that the member violated parliamentary procedure in the course of expressing such views even though the member was neither (a) charged with any violation of parliamentary procedure nor (b) found guilty by any union tribunal of any such violation, and (c) no evidence of any such violation on his part was before either of the union tribunals that disciplined him for his expression of views?

The court below held that it may not.

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STATEMENT OF THE CASE

At the membership meeting of Local 17 held on August 29, 1980, a scuffle between two members interrupted the reading of the business manager's report (J.A. 172a, 195a). The Sergeant-at-Arms broke it up and with the assistance of Petramale and others restored order (J.A. 173a, 182a, 205a-206a, 277a, 280a).

After the scuffle was over, but before the business manager resumed his report (J.A. 173a, 174a), at a time when no one else was speaking (J.A. 280a), Petramale, the Respondent here,

stood up and stated in substance that the union's officers were corrupt and had rigged the last election. The Local's minutes, reporting Petramale's remarks, attributed to Petramale use of the expletives "fuck" and "fucking" (J.A. 173a, 225a). Both Petramale and a witness, Biengardo, testified that Petramale did not use either of those, or any other, obscene expressions (J.A. 211a, 282a-283a).

On August 31, 1980, the *Middletown Record*, a newspaper, reported Petramale's opinion that the scuffle at the union meeting was "set up" by the union's leadership (J.A. 133a).

On September 3, 1980, Lorenzo Diorio (Local 17's business manager), his son (the Local's Secretary-Treasurer) and the Local's President, filed disciplinary charges, charging Petramale with interfering with the union's business "by using vulgar and profane language and slanderous statements and accusations against the officers," with "wilfully slandering the officers" and "circulating false reports and gross misrepresentations about their honesty," and with "slander[ing] the officers in the *Middletown Record* August 31, 1980..." (J.A. 97a).

A trial board of Local 17 subsequently conducted a trial at which it received no testimony at all (Trial Tr. 433) but did receive two documents as evidence in support of the charges (Trial Tr. 437; and J.A. 131a). One of these was the article from the *Middletown Record* (J.A. 133a); the other was an excerpt from the Local's minutes recounting Petramale's criticism of the officers at the meeting (J.A. 132a). On this evidence, the trial board found Petramale guilty "of all charges" and imposed a fine and suspension from attending membership meetings (J.A. 102a).

Petramale appealed to Petitioner ("LIUNA") in January 1981, declaring in his appeal that his comments at the Local meeting were "free speech" and, moreover, "were not slanderous, because they were true" (J.A. 121a-122a). In a follow-up letter on February 10, 1981, he told LIUNA that "[w]hile I... said that the officers... were dishonest, corrupt and that the election was fixed by Diorio and the officers involved, I did not use vulgar or profane language...." He added that "The above mentioned was freedom of speech and was not slanderous, because what I said was true!" (J.A. 110a).

On June 23, 1981, LIUNA's Hearings Panel held an evidentiary hearing. Petramale was not present but Local 17's officers and attorney were, and a transcript was taken (J.A. 134a-157a). At the hearing, the elder Diorio testified as to what Petramale had said at the meeting about the officers and added, "These are his accusations at an open meeting of 144 people, and that is the basis that we preferred the charges" (J.A. 145a). When asked whether the meeting was "disrupted," Diorio replied that "[i]t has been disrupted ever since." Asked to explain, Diorio said that "[t]his guy is up on the floor harassing the President and the officers at every meeting since then" (J.A. 147a).

On that record, LIUNA's Hearings Panel found Petramale guilty (J.A. 114a) and recommended that disciplinary punishment, reduced to a two-year suspension from attending meetings, be imposed. LIUNA's General Executive Board adopted the Panel's Findings and Recommendation (J.A. 113a) and the suspension thereupon went into effect.

Petramale instituted this suit and moved in the District Court to preliminary enjoin his suspension. From denial of his motion, he appealed to the Court of Appeals. While his appeal was pending, Local 17 asked LIUNA to terminate the suspension (J.A. 118a), and LIUNA did so (J.A. 115a). Petramale thereupon withdrew his appeal (J.A. 2a) and the case proceeded to trial. From dismissal after trial, Petramale appealed again (J.A. 240a) and the Court of Appeals reversed (Pet.App. 1a-12a).

POINT I.

AN INTERNATIONAL UNION THAT KNOWINGLY RATIFIES OR DIRECTS IMPOSITION OF UNLAWFUL DISCIPLINE UPON A MEMBER IS LIABLE THEREFOR

Those circuits that have passed on the issue are in agreement that, under the LMRDA, where an international union that knowingly ratifies or directs unlawful discipline of a union member by one of its locals, it is liable, along with the local, to the member; *cf. Aguirre v. Automotive Teamsters*, 633 F.2d 168, 174 (9th Cir. 1980); *Allen v. Int'l Alliance of Theatrical Stage Employees*, 338 F.2d 309, 317-318 (5th Cir. 1964). That holding is consistent

with common law principles of agency; *cf.* *Aguirre v. Automotive Teamsters*, *supra*, 633 F.2d at 171-173; *Shimman v. Frank*, 625 F.2d 80, 95 (6th Cir. 1980); and see: *Carbon Fuel Co. v. United Mine Workers*, 444 U.S. 212, 216-217 (1979); *Seattle Times v. Seattle Mailer's Union*, 664 F.2d 1366, 1399 (9th Cir. 1983).

It is also consistent with the law decided under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5, regarding approval by an international union of a local union's unlawfully discriminatory bargaining agreement: in such a situation, the international may be held jointly liable with the local union for the unlawful discrimination; *cf.* *Myers v. Gilman Paper Corp.*, 544 F.2d 837, 851 (7th Cir.) *cert. dismissed sub nom Local 747 v. Myers*, 434 U.S. 801 (1977); *Patterson v. American Tobacco Company*, 535 F.2d 257, 270-271 (4th Cir. 1976); and see: *Sagers v. Yellow Freight System, Inc.*, 529 F.2d 721, 737-738 (5th Cir. 1976); *Kaplan v. IATSE*, 525 F.2d 1354, 1359-1360 (9th Cir. 1975).

In this instance, LIUNA, with full knowledge that Local 17 had disciplined Petramale for his expression of views, arguments and opinions, modified the discipline but, as modified, ratified it and directed that it be imposed upon Petramale.

When it did so, LIUNA had before it:

(a) the charges themselves, stating Petramale's offense as that of making "slandorous statements and accusations," "circulating false reports and gross misrepresentations," "slander[ing] the officers in the Middletown Record," etc. (J.A. 97a);

(b) the decision of Local 17's trial board, which disciplined Petramale on "all charges," jointly (J.A. 102a);

(c) Local 17's trial board's report, which stated that the charging parties' evidence consisted (entirely) of a newspaper article (J.A. 133a) and a purported account of what Petramale had said at the membership meeting (J.A. 132a);

(d) Petramale's appeal, in which he advised LIUNA that the comments he had expressed at the meeting and to the newspaper reporter were "free speech" and were "true" (J.A. 121a-122a); and

(e) Petramale's follow-up letter of February 10, 1981, in which he reminded LIUNA that the comments he had expressed were "freedom of speech" and were "true" (J.A. 110a).

In addition, LIUNA's Hearings Panel conducted its own evidentiary hearing or trial *de novo*, at which the elder Diorio testified that Petramale's "accusations" against the officers were the sole basis for their charges against Petramale and the entire substance of any "disruption" suffered by the Local.

Plainly, LIUNA was not uninformed, nor did it play a merely passive role in regard to the unlawful discipline. With full knowledge that Petramale's only offense was his expression of views and opinions, LIUNA ratified and approved the disciplinary punishment and directed that, as modified, it be imposed. By ordinary principles of agency, LIUNA is clearly liable for those acts; *cf. Carbon Fuel Co. v. United Mine Workers, supra*, 444 U.S. at 216-217; *Aguirre v. Automotive Teamsters, supra*, 433 F.2d at 174.

POINT II.

THE DISCIPLINE WAS PATENTLY UNLAWFUL

A study of the charges on which Petramale was disciplined by Local 17 and by LIUNA (Pet.App. 4a-5a, J.A. 97a) makes clear that Petramale was disciplined for expressing views and opinions — and not (as LIUNA now contends (Pet. 14)) for violating any rules of parliamentary procedure.

So does a review of the evidence presented in support of those charges. The evidence presented to Local 17's trial board consisted entirely of two documents: an extract from the Local minutes purportedly reporting what Petramale had said at the meeting (J.A. 132a) and a newspaper article reporting Petramale's criticism of the union's officers (J.A. 133a). Similarly in regard to LIUNA's Hearings Panel: the evidence before it related entirely to Petramale's expression of views and opinions.

Moreover, neither union tribunal found Petramale guilty of violating that provision of LIUNA's uniform local union constitution that requires members "[t]o observe proper decorum in attending and participating in meetings and functions of the Organization, in accordance with such reasonable rules established by the Organization and generally accepted Parliamentary rules of procedure pertaining to the conduct of meetings and functions" (§ (e) of Article III, Section 3; J.A. 94a).

On the contrary, LIUNA's Hearings Panel specified in its report (J.A. 114a) that it found Petramale guilty only of violating §§ (f) and (g) of Article III, Section 3, which provisions relate to matters other than parliamentary procedure (J.A. 94a).

LIUNA's present assertion that it disciplined Petramale for some violation of parliamentary procedure is therefore unsupported by the record. The charges fail to specify any such violation. And no evidence of any such violation was presented either to Local 17's trial board or to LIUNA's Hearings Panel. All those tribunals had before them was evidence that Petramale had expressed views, arguments and opinions critical of the officers of Local 17 and of LIUNA. LIUNA's evocation of *United Steelworkers v. Sadlowski*, 457 U.S. 102 (1982) (Pet. 12-13) is therefore without a factual basis. Petramale was disciplined, for expression of views and opinions, in clear violation of § 609 of the LMRDA, 29 U.S.C. § 529. See: *Hall v. Cole*, 412 U.S. 1, 7-8 (1973).

CONCLUSION

For the reasons set forth above, the petition for certiorari should be denied.

Respectfully submitted,

BURTON H. HALL
HALL & SLOAN
401 Broadway
New York, N.Y. 10013
(212) 431-9114

